

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CARL FOUST,

Plaintiff,

v.

ALLEN, et al.,

Defendants.

No. 2:23-CV-0179-DAD-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

On July 25, 2023, the Court issued an order addressing the sufficiency of Plaintiff's complaint. See ECF No. 10. The Court determined that Plaintiff's complaint states cognizable Eighth Amendment excessive force claims against Defendants Godinez, Perez, and Strange arising from an incident which appears to have occurred at Salinas Valley State Prison. See id. The Court also determined that Plaintiff's remaining claims related to the conditions of confinement, being placed in an MRI machine, medical care, and retaliation, as well as Plaintiff's claim against the prison warden, Defendant Allen, are insufficient to proceed. See id. Plaintiff was provided leave to amend and cautioned that, if no amended complaint was filed within the 30-day time period provided therefor, the action would proceed on Plaintiff's excessive force claims against Defendants Godinez, Perez, and Strange, and that the Court would recommend that

1 all other claims and defendants be dismissed. See id. As of November 2, 2023, Plaintiff had not
2 filed an amended complaint and the Court directed service on Defendants Godinez, Perez, and
3 Strange consistent with the July 25, 2023, order. See ECF No. 17. The Court now recommends
4 dismissal of all remaining claims and defendants.

5 Based on the foregoing, the undersigned recommends as follows:

6 1. This action proceed on Plaintiff's complaint, ECF No. 1, as to Plaintiff's
7 Eighth Amendment excessive force claim against Defendants Godinez, Perez, and Strange.

8 2. Plaintiff's claims related to the conditions of confinement, being placed in
9 an MRI machine, medical care, and retaliation be DISMISSED for failure to state a claim.

10 3. Plaintiff's claims against Defendant Allen be DISMISSED for failure to
11 state a claim.

12 These findings and recommendations are submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
14 after being served with these findings and recommendations, any party may file written objections
15 with the Court. Responses to objections shall be filed within 14 days after service of objections.
16 Failure to file objections within the specified time may waive the right to appeal. See Martinez v.
17 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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19 Dated: January 11, 2024



20 DENNIS M. COTA
21 UNITED STATES MAGISTRATE JUDGE
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